Seippel v. Sidley Austin Brown & Wood, LLP

Doc. 2

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN 13 2005
CLERK, U.S. DISTRICT COURT

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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

3-05MC-0066M

WILLIAM SEIPPEL, et al.,	§	
	§	
PLAINTIFFS,	§	
	§	
v.	§	**NO. 03-CV-6942 (SAS)(S.D.N.Y.)**
	§	
SIDLEY AUSTIN BROWN & WOOD, LLP, et al.,	§	
	§	
	§	
DEFENDANTS.	§	

DEARY MONTGOMERY DEFEO & CANADA'S APPENDIX OF DOCUMENTS IN SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER AND MOTION TO QUASH SUBPOENA, AND BRIEF IN SUPPORT

Deary Montgomery DeFeo & Canada, LLP relies upon the following attached proof in their Motion for Protective Order and Motion to Quash Subpoena, and Brief in Support thereof:

1. Seippel subpoena issued by the Northern District of Texas on May 27, 2005 in the above-referenced case (attached as Exhibit "A");

2. Order Preliminarily Certifying a Settlement Class and Approving Settlement issued in *Denney, et al. v. Jenkens & Gilchrist, et al.*, No. 03-CV-5460(SAS)(S.D.N.Y.) (attached as Exhibit "B");

3. Affidavit of W. Ralph Canada, Jr. (attached as Exhibit "C"); and

4. Order Granting Motion for Disclosure and Protective Order issued in *Denney, et al. v. Jenkens & Gilchrist, et al.*, No. 03-CV-5460 (SAS) (S.D.N.Y.) (attached as Exhibit "D").

Respectfully submitted,

DEARY MONTGOMERY DEFEO
& CANADA, L.L.P.

DAVID R. DEARY
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via regular and electronic mail upon all counsel of record on the 13th day of June, 2005:

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W. Ralph Canada, Jr.

Exhibit A

AO 88 (Rev. 1/94) Subpoena in a Civil Case - SDNY WEB 4/99

Issued by the
UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

SEIPPEL, et al.

V.

SIDLEY AUSTIN BROWN & WOOD LLP ET AL.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: [1] 03 CV 6942 (SAS) (S.D.N.Y.)

Date Del: 5/27/05
Time: 10:30AM
Initials: LHR

TO: Deary Montgomery DeFeo & Canada, L.L.P.
Ralph Canada
Chateau Plaza, Suite 1565
2515 McKinney Avenue Dallas, Texas 75201

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☑ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Exhibit A, attached hereto.

PLACE	DATE AND TIME
Fensterstock & Partners LLP, 30 Wall Street, 9th Floor, New York, New York 10005	June 10, 2005

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
[signature] Attorneys for Plaintiffs	May 26, 2005

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Robert L. Lash, Esq. Fensterstock & Partners, 30 Wall Street, 9th Floor, New York, NY 10005, (212) 785-4100

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

[1] If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev. 1/94) Subpoena in a Civil Case - SDNY WEB 4/99

PROOF OF SERVICE

	DATE	PLACE
SERVED		

SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on ____________________
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A TO DEARY MONTGOMERY SUBPOENA

A. DEFINITIONS

The following terms shall have the meanings set forth below:

1. "COBRA" means the tax plan or tax shelter, known as Currency Options Bring Reward Alternatives, that is the subject of the Complaint.

2. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

3. "Complaint" means Plaintiffs' Second Amended Complaint filed in *William H. Seippel and Sharon A. Seippel v. Sidley Austin Brown & Wood, et al.*, No. 03 Civ. 6942 (SAS) (S.D.N.Y.), a copy of which is attached hereto as Exhibit 1.

4. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

5. "Deary Montgomery" means Deary Montgomery DeFeo & Canada, L.L.P. and its present and former officers, directors, shareholders, partners, members, parents, subsidiaries, employees (including all attorneys), affiliates, predecessors, and successors, including but not limited to David R. Deary and W. Ralph Canada, Jr..

6. "Deutsche Bank" means Deutsche Bank AG, and its present and former officers, directors, partners, parents, subsidiaries, employees, affiliates, predecessors, and successors, including but not limited to Perry Parker and David Parse.

7. "Deutsche Bank Alex Brown" means Deutsche Bank Securities, Inc., d/b/a/ Deutsche Bank Alex Brown, and its present and former officers, directors, partners, parents, subsidiaries, employees, affiliates, predecessors, and successors, including but not limited to Perry Parker and David Parse.

8. "Document" means (a) documents as defined in Rule 34(a) of the Federal Rules of Civil Procedure, (b) documents as defined in Rule 26.3 of the Local Civil Rules of the Southern District of New York and (c) electronic or computerized data compilations.

9. "Each and every" means all, any, each and every.

10. "Jenkens & Gilchrist" means Jenkens & Gilchrist, a Professional Corporation, and its present and former officers, directors, shareholders, partners, members, parents, subsidiaries, employees (including all attorneys), affiliates, predecessors, and successors, including but not limited to Paul Daugerdas, Donna Guerin, Laura Lightholder and Erwin Mayer.

11. "Person" means any natural person or any business, legal, or governmental entity or association, and any partnership.

12. "Sidley Austin" means Sidley Austin Brown & Wood LLP, and its present and former officers, directors, partners, members, employees (including all attorneys), affiliates, predecessors, and successors, including but not limited to Brown & Wood, R.J Ruble and Thomas R. Smith.

13. "You" means Deary Montgomery.

14. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each discovery request all responses that might otherwise be construed to be outside of its scope.

15. The singular form of any word includes the plural and vice versa.

16. The feminine of any word used herein includes the masculine and the neuter. The neuter form of any word used herein includes the masculine and the feminine. The masculine form or any word used herein includes the feminine and the neuter.

17. The terms "all" and "each" shall be construed as all and each.

18. The past tense of any verb used herein includes the present tense and vice versa.

B. INSTRUCTIONS

1. Each of the requests should be answered or responded to in accordance with Rule 45 of the Federal Rules of Civil Procedure and the Instructions and Definitions set forth herein.

2. Each document should be produced in the form, file or container and in the same order therein in which it existed prior to production and is kept in the normal course of business. File folders, boxes, or other containers in which each document is found shall be produced intact, including the labels, bindings, clips, staples, or index.

3. If you withhold any document covered by or responsive to these requests, furnish a list specifying each document withheld, as required by Rule 45(d)(2) Federal Rules of Civil Procedure.

4. Unless otherwise stated, each request seeks (a) documents dated, created or received, during the period from January 1, 1996 through the present and (b) documents, whenever dated, created or received, that refer to or concern events or facts occurring during the period from January 1, 1996 to the present.

C. DOCUMENTS REQUESTED

1. All documents produced to you or your clients by Jenkens & Gilchrist in connection with *Denney et al v. Jenkens & Gilchrist, et al.*, No. 03-CV-5460 (S.D.N.Y.), or any other case concerning COBRA.

2. All documents produced by Sidley Austin to you or your clients in any litigation concerning COBRA.

3. All documents produced by Deutsche Bank or Deutsche Bank Alex Brown to you or your clients in any litigation concerning COBRA.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

WILLIAM H. SEIPPEL and SHARON A. SEIPPEL,

Plaintiffs,

- against -

SIDLEY AUSTIN BROWN & WOOD LLP; R.J. RUBLE; DEUTSCHE BANK AG; and DEUTSCHE BANK SECURITIES, INC., d/b/a DEUTSCHE BANK ALEX BROWN,

Defendants.

---x

No. 03 Civ. 6942 (SAS)

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

RECEIVED
DEC 08 2004
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiffs William H. Seippel ("Mr. Seippel") and Sharon A. Seippel ("Mrs. Seippel") (together the "Seippels"), by their attorneys, Fensterstock & Partners LLP, as and for their Second Amended Complaint against Defendants Sidley Austin Brown & Wood LLP, successor to Brown & Wood LLP ("Brown & Wood"), R.J. Ruble ("Ruble"), Deutsche Bank AG, and Deutsche Bank Securities, Inc., d/b/a Deutsche Bank Alex Brown (together with Deutsche Bank AG, "Deutsche Bank"), allege as follows:

INTRODUCTION

1. Plaintiffs bring this action, seeking in excess of $12 million in compensatory damages, plus $100 million in punitive damages, and related relief, against a law firm, Brown & Wood, one of its former partners, and Deutsche Bank, for their role in promoting a tax strategy dubbed COBRA that the federal government has found to be an unregistered tax shelter and inducing the Seippels to utilize the COBRA tax strategy and file tax returns premised on the

assumption that the strategy was lawful. COBRA has been rejected by federal and state tax agencies, as the Defendants knew or should have known it would be.

2. Plaintiffs allege claims for securities fraud, fraud, declaratory relief, and seeking to recover unethical, excessive, and illegal fees. Plaintiffs seek damages for the fees they paid to Defendants, and Defendants' co-promoters in the COBRA scheme, in excess of $1,000,000; the amount lost on the COBRA transaction itself in excess of $300,000; the amount that Plaintiffs have paid and/or will pay a new set of advisors to rectify Defendants' self-serving, bogus tax advice in an amount estimated to be $1,000,000; the interest and penalties the tax authorities have assessed, some of which Plaintiffs have already paid, and/or may in the future assess, in an amount exceeding $1.7 million; the taxes Plaintiffs have paid and may be assessed in the future, that Defendants promised would be avoided, in an amount exceeding $5 million; the damage caused by the Seippels' having liquidated assets at fire sale prices in order to meet their tax obligations, including the interest and penalties mentioned above, in an amount exceeding $2.6 million; $100 million in punitive damages for Defendants' extreme and wanton conduct that not only damaged Plaintiffs but also was flagrantly against the public interest; a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Defendants shall be liable to Plaintiffs for any additional amounts, including taxes, interest and penalties, that may be assessed against them by the Internal Revenue Service and state tax authorities or that Plaintiffs will pay in the future, and other damages; injunctive relief; disgorgement of the fees charged by Brown & Wood and Deutsche Bank; plus compensation for other damages sustained.

PARTIES

3. Plaintiffs William H. Seippel and Sharon A. Seippel are both individuals and citizens of Georgia. They resided in Virginia in 1999, 2000 and 2001. As a married couple, the Seippels filed federal and state joint tax returns for the tax years 1999 and 2000.

4. On information and belief, Defendant Sidley Austin Brown & Wood LLP is one of the nation's largest law firms, with over 1,400 attorneys and offices in New York, New York; Los Angeles and San Francisco, California; Chicago, Illinois; Dallas, Texas; Washington, D.C.; London, Geneva, Tokyo, Hong Kong, Singapore, Shanghai and Beijing. Its principal place of business is in New York, New York. On information and belief, Sidley Austin Brown & Wood is a limited liability partnership organized in Delaware and is the successor in interest to Brown & Wood, the New York firm that advised the Seippels, and thus it is referred to herein as "Brown & Wood." Upon information and belief, no Brown & Wood partner is a citizen of Georgia.

5. On information and belief, Defendant R.J. Ruble ("Ruble") is an attorney licensed to practice law in the State of New York, who, until, on information and belief, October 2003 when he was dismissed from the firm for breaches of fiduciary duty, was a partner in Sidley Austin Brown & Wood's New York office and a member of that firm's Executive Committee, and is a citizen of New York.

6. On information and belief, Defendant Deutsche Bank AG is a leading international financial services conglomerate, with 13 million customers and 71,000 employees in 76 countries, including offices in New York. On information and belief, Deutsche Bank AG is

a foreign corporation organized and existing under the laws of Germany, with its principal place of business in Germany, and with offices in New York, New York.

7. On information and belief, Defendant Deutsche Bank Securities, Inc. d/b/a Deutsche Bank Alex Brown (together with Deutsche Bank AG, "Deutsche Bank") is a Delaware corporation with its principal place of business in New York, New York, and is a member of the New York Stock Exchange.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to (a) Section 27 of the Exchange Act of 1934 (15 U.S.C. § 78aa) and 28 U.S.C. §§ 1331 and 1337 because the securities fraud claim raises a federal question; (b) 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds $75,000; and (c) 28 U.S.C. § 1367 because the remaining state law claims are so related to the securities fraud claim that they form part of the same case or controversy.

9. Venue is proper in this District pursuant to (a) 18 U.S.C. § 1965(a) because the Defendants all are found, reside and/or transact business in this District; (b) 18 U.S.C. § 1965(b) because the ends of justice require that the parties residing in any other district be brought before this Court; (c) 28 U.S.C. § 1391(a) and 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this District; and (d) 28 U.S.C. § 1391(a)-(b) because one or more of the Defendants is found in and subject to personal jurisdiction in this District.

STATEMENT OF FACTS

10. On information and belief, Brown & Wood and Ruble were involved in the development, marketing, selling and promotion of tax shelters that were listed transactions, in concert with accounting firms, as early as 1996 and continuing through at least October 2003. This involvement included tax shelters known as Son-of-BOSS and COBRA.

11. On information and belief, at some point in 1998 or 1999, Brown & Wood and Ruble, along with Deustche Bank, entered into an arrangement with Paul M. Daugerdas ("Daugerdas") of Jenkens & Gilchrist, P.C. ("Jenkens & Gilchrist"), and Ernst & Young to jointly develop, market and promote certain tax strategies for the purpose of receiving and splitting millions of dollars in fees ("Defendants' Arrangement"). In agreeing to this arrangement, Defendants knew or should have known that they and the other parties to the Defendants' Arrangement would make fraudulent misrepresentations and/or omissions to actual and potential clients, such as Plaintiffs. Together, these firms and their partners and employees developed, marketed, sold and promoted at least 19 different tax strategies, including COBRA (an acronym for "Currency Options Bring Reward Alternatives").

12. On information and belief, as was the case with each of these tax strategies, COBRA was the same as or substantially similar to "listed transactions," transactions that are subject to the list maintenance requirements of Internal Revenue Code § 6111 because they have the potential for tax avoidance or evasion, listed in IRS regulations or notices. COBRA should have been registered as tax shelters pursuant to Internal Revenue Code § 6111(c), but the Defendants did not register it.

13. On information and belief, under the Defendants' Arrangement, the role of Brown & Wood and Ruble was to provide opinion letters attesting to the lawfulness of the tax shelters the Defendants promoted. Brown & Wood and Ruble also played a key role in designing and developing some of the tax strategies, marketing them and finding marketing partners.

14. On information and belief, under the Defendants' Arrangement, Deutsche Bank's role was to structure the transactions so that they had a semblance of economic substance but, as Deutsche Bank knew, in reality would only generate losses. Deutsche Bank's role also included providing a financial facade of economic substance for the financial transactions taxpayers would engage in to generate tax losses. Deutsche Bank served as the counter-party on the numerous transactions engaged in to implement those shelters.

15. On information and belief, in addition, Deutsche Bank was to solicit potential participants in the shelters.

16. To carry out the Defendants' Arrangement, the Defendants agreed that the person meeting with potential participants in a tax shelter could make the representations discussed herein notwithstanding the fact that such representations concerned the role of, work of, participation of, views of, or would otherwise have been made by, a particular defendant.

17. The essential features of a COBRA transaction were as follows:

a. First, using the facilities of Deutsche Bank, a taxpayer would sell a short option and purchase a long option in almost identical amounts on a foreign currency exchange with different strike prices (a "spread"), both to expire in 30 days. (The taxpayer would be advised to form a limited liability company to engage in the options transactions.) The cost of the long options, though large, would be only slightly more than the premiums earned on sale of the short options;

b. Second, the taxpayer would contribute his or her options to a general partnership formed for the sole purpose of conducting the COBRA transaction. After 30 days, the options would expire either "in or out of the money," resulting in a gain or loss depending upon the exchange rate between the U.S. dollar and the relevant foreign currency on the expiration date;

c. Third, the taxpayer would make a capital contribution consisting of cash or other capital assets to the partnership;

d. Fourth, the taxpayer would contribute his or her interest in the partnership to an S corporation formed for this purpose, causing the termination of the partnership; and

e. Finally, the S corporation would sell the capital assets contributed by the taxpayer.

18. While each of these steps was planned by the Defendants in advance as a single transaction designed to reduce the taxpayer's tax liability, the Defendants agreed neither to disclose this to COBRA participants nor to explain the consequences of this fact to COBRA participants.

19. The Defendants agreed that taxpayers would be advised that because the basis of the taxpayer's interest in the partnership would be increased for tax purposes by the purchase cost of the long options, but not decreased by the premium earned on the sale of the short options, upon the contribution of the partnership interests to the S corporation and the sale by the S corporation of its capital assets, the S corporation would realize a large loss that could be applied to substantially reduce or eliminate the substantial gain realized by the taxpayer on another event and thus substantially reduce or eliminate the taxpayer's tax liability for that gain. The Defendants further agreed that taxpayers were to be advised that the amount of loss to be generated by the COBRA transaction could be pre-determined by the Defendants.

20. The Defendants agreed that taxpayers would be told that while the most expected result of a COBRA transaction was that the loss or gain on the long options would be almost completely offset by the gain or loss on the short options, and vice versa, there was a reasonable chance that the taxpayer would earn a significant profit on the COBRA transaction. In fact, Deutsche Bank, as well as the other Defendants, knew (a) that the options transactions were structured in a way that vested in Deutsche Bank the ability to control whether a profit was earned and how much that profit would be and (b) that Deutsche Bank would exercise its discretion to ensure no profit would be earned.

21. On information and belief, the Defendants agreed that the accounting firms and other persons, including Deutsche Bank and Ernst & Young, who would solicit taxpayers to participate in COBRA and the other tax shelters offered under the Defendants' Arrangement, would orally present the legal opinion of Brown & Wood and Ruble to prospective COBRA

participants. On information and belief, it was also agreed that the persons soliciting taxpayers to participate in COBRA would represent that the currency option transaction had a significant chance of earning a substantial profit and would not disclose the unique structure of the COBRA transactions or that Deutsche Bank would exercise its discretion to ensure that losses were generated. On information and belief, the Defendants further agreed that prospective COBRA participants would be told that: (a) COBRA was a legitimate and lawful tax strategy, (b) COBRA had been developed for a "select audience" of individuals who had generated significant gains or income, and (c) these individuals could take advantage of a legal "loophole" in the tax laws to shield all or most of their income from taxation.

22. On information and belief, the Defendants further agreed (a) that the lawyers' opinion would be presented in an abbreviated format that did not disclose fully the risks associated with COBRA so that prospective COBRA participants would be lulled into engaging in COBRA transactions, and (b) that the prospective COBRA participants would be told that Brown & Wood and Jenkens & Gilchrist would issue opinion letters attesting to the legitimacy of COBRA and that their opinion letters would protect against the assessment of penalties in the unlikely event the tax authorities challenged COBRA. Further, on information and belief, the Defendants agreed that the formal opinion letters would be delivered to clients only after the clients had engaged in COBRA transactions and paid the Defendants huge fees.

23. On information and belief, the Defendants agreed that on some transactions Jenkens & Gilchrist and Daugerdas would issue the primary opinion letter and receive the lion's share of the fees, along with the person who solicited the COBRA participant; on these

transactions, it was agreed Brown & Wood and Ruble would issue the secondary opinion letter and receive a smaller fee. On information and belief, the Defendants agreed that on other transactions, Brown & Wood and Ruble would issue the primary opinion letter and receive the lion's share of the fees, along with the person who solicited the COBRA participant; on these transactions, it was agreed that Jenkens & Gilchrist and Daugerdas would issue the secondary opinion letter and receive a smaller fee.

24. In 1999, and for several years prior, Mr. Seippel was the Chief Financial Officer ("CFO") of a Virginia-based company, where he had accumulated stock options. Ernst & Young was that company's auditors and provided tax advice, and other financial services to, and prepared the tax returns of, the company's senior executives, including Mr. Seippel.

25. In mid-1999, Mr. Seippel decided to change his employment. Thus, he was planning to exercise valuable stock options granted by his employer and then sell the resulting stock (the "Stock Options Transaction"). Ernst & Young knew of Mr. Seippel's plans and the substantial gains that the Seippels would have to recognize upon engaging in the Stock Options Transaction and the resulting tax liability.

26. In November 1999, pursuant to the Defendants' Arrangement, and with agreement by and on behalf of Defendants, Charles Paul of Ernst & Young approached the Seippels, advising them that a lawful strategy named "Currency Options Bring Reward Alternatives," or "COBRA," could drastically reduce the tax liability that would otherwise result from Mr. Seippel's engaging in the Stock Options Transaction, and would yield legitimate tax savings and was lawful and conservative.

27. During several meetings in the Seippels home and in telephone conversations with and emails to Mr. Seippel that took place in November and December 1999, Ernst & Young's Mr. Paul, acting with Defendants' knowledge and consent, made the representations described herein, including Paragraphs 29 and 31, and failed to disclose the facts described herein, including Paragraphs 33, 36 and 38.

28. As will be discussed below, these representations and omissions were false and misleading.

29. The Defendants, acting through Ernst & Young's Mr. Paul, represented to the Seippels that:

a. COBRA was 100 percent legitimate, and backed by two blue chip law firms (Brown & Wood and Jenkens & Gilchrist) that had independently and objectively reviewed COBRA;

b. Brown & Wood would provide an independent and objective assessment of the tax transaction;

c. Brown & Wood would provide an opinion letter attesting to the legitimacy and conservative nature of the tax transaction;

d. The COBRA transaction was not a "sham transaction" that would be ignored or disallowed for tax purposes and the opinion letter from Brown & Wood would confirm this;

e. The attorneys at Brown & Wood were tax specialists with excellent and national reputations and experience;

f. COBRA was not only completely legal and based on "loopholes" created by the IRS, but actually was "conservative";

g. The opinion letter would enable the Seippels, in the unlikely event of an audit, to satisfy the IRS of the propriety of the tax strategy;

h. The opinion letter would protect the Seippels from the imposition of penalties by tax authorities; and

i. COBRA was "proprietary" so the Seippels could not take it to their own attorney for an opinion as to its legitimacy.

30. Each of the representations in the preceding paragraph was false and misleading.

31. During their meetings and telephone conversations with Mr. Paul in November and December 1999, Mr. Paul also advised the Seippels that while the most likely result of engaging in the COBRA transactions was that the loss or gain on the long options would be almost completely offset by the gain or loss on the short options, and vice versa, there was a reasonable chance that the Seippel could earn a significant profit.

32. That representation was false and misleading.

33. In fact, Deutsche Bank, as well as the other Defendants, knew that the options transactions were structured in a way that vested in Deutsche Bank the ability to control whether a profit was earned and how much it would be. Neither Deutsche Bank nor the other Defendants disclosed this unique structure to the Seippels or other clients and in fact concealed it in their mailings and wire communications, because that might have led clients not to participate in the transactions, and sacrifice the substantial fees Defendants would earn on the transactions.

Neither Deutsche Bank nor the other Defendants disclosed to the Seippels the adverse effect the lack of a realistic chance of earning a profit would or could have on the legitimacy of the COBRA strategy under applicable tax laws.

34. Had Deutsche Bank or the other Defendants disclosed (a) that there was not a reasonable chance of earning a profit on the COBRA transaction, (b) the unique structure of the options transactions, (c) that Deutsche Bank would exercise its discretion to ensure a tax loss, or (d) the adverse effect the lack of a realistic chance of causing a profit had on the legitimacy of the COBRA strategy, Plaintiffs would not have participated in the transaction.

35. The lack of a realistic chance of causing a profit is a fact that renders COBRA an abusive tax shelter, according to the IRS.

36. In his telephonic, e-mail and in-person communications with the Seippels during November and December 1999, Paul, acting with the authority, knowledge and agreement of the Defendants, failed to disclose and concealed the following material facts:

a. Each of the steps of the COBRA transaction[1] was planned by the Defendants in advance as a single transaction designed to reduce the taxpayer's tax liability;

b. The consequences of that fact;

c. The options transactions were structured in a way that vested in Deutsche Bank the ability to control whether a profit was earned and how much that profit would be; Deutsche Bank would exercise its discretion to ensure no

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1 These steps are described in Paragraph 17, *supra.*

profit would be earned; and the currency option trades would only occur on paper;

d. The adverse effect the lack of a realistic chance of earning a profit would or could have on the legitimacy of the COBRA strategy under applicable tax laws;

e. Brown & Wood had already prepared "canned" opinion letters concerning the COBRA transactions, and needed only to fill in several blanks for each of the many clients to which they rendered such "opinion letters";

f. The potential consequences of that fact that the opinion letters were "canned";

g. The role of the Brown & Wood in promoting the tax schemes;

h. The fact that its role as promoter (i) would mean the Seippels and other clients could not rely on the opinion letters and tax advice to avoid the imposition of tax penalties and (ii) would impair or allow the piercing of the attorney-client and accountant-taxpayer privileges;

i. The existence of the decision in ACM Partnership v. Commissioner and other case law contradicting the representations set out above;

j. The existence of IRS Notice 1999-59;

k. The fee arrangements proposed by Brown & Wood and Ruble were was unethical, violated the codes of professional responsibility applicable to lawyers and accountants; and

l. The fees charged were unreasonable and excessive.

37. During their meetings and telephone conversations with Mr. Paul in late 1999, the Seippels were also advised by Mr. Paul, acting at the behest of and with the knowledge and authority of the Defendants, that because the basis of Mr. Seippel's interest in the partnership would be increased for tax purposes by the purchase cost of the long options, but not decreased by the premium earned on the sale of the short options, upon the contribution of the partnership interests to the S corporation and the sale by the S corporation of its capital assets, the S corporation would realize a large loss that could be applied to substantially reduce or eliminate the substantial gain realized by the Seippels in 1999 as a result of the Stock Options Transaction, and thus substantially reduce or eliminate the Seippels' tax liability for this gain. The Seippels were further advised that the amount of loss to be generated by the COBRA transaction could be pre-determined by the Defendants.

38. During their meetings and telephone conversations with him in late 1999, Mr. Paul also advised the Seippels that a legal opinion would be provided by Brown & Wood, for a fee of $21,180. Acting at the behest of and with the knowledge and authority of the Defendants, including Brown & Wood and Ruble, Mr. Paul advised the Seippels that (a) the Brown & Wood opinion letter would confirm the propriety of the COBRA transaction and of claiming the resulting losses on the Seippels' tax return; (b) this opinion letter, in the event of any IRS audit, would enable the Seippels to satisfy the IRS auditors as to the propriety of the tax returns; and (c) the Brown & Wood opinion letter would serve as a protection against the imposition of tax penalties in the unlikely event the IRS challenged COBRA. These representations were false and

misleading. On information and belief, Brown & Wood and Ruble had already prepared a "canned" opinion letter approving the COBRA transactions (the "Opinion Letter"), and needed only to fill in several blanks for each of the many clients to which they rendered such "opinion letters." The fact that the "opinion letter" was "canned" was not disclosed to the Seippels; nor was the potential consequences of that fact disclosed by anyone, including Brown & Wood and Ruble.

39. The IRS and several courts have taken the position that the role of Brown & Wood and Ruble in promoting the COBRA tax strategy means that the lawyers' advice is not subject to the attorney-client privilege. The IRS has taken the position that the Opinion Letter issued by Brown & Wood and Ruble cannot be relied upon to avoid the imposition of tax penalties.

40. None of the Defendants disclosed to the Seippels the ramifications that their role as promoters of the tax strategy would or could have on the existence of attorney-client privilege or the ability to use the Opinion Letter to avoid tax penalties if the IRS rejected the COBRA strategy.

41. Additionally, in a sworn declaration, Robert Coplan of Ernst & Young, stated that, prior to November 1999, E&Y had concluded that "[g]iven the role played by J&G in working jointly with E&Y to plan and structure the COBRA transaction," the IRS would not accept the Jenkens & Gilchrist opinion letter as a legal opinion that would protect clients from penalties that could be imposed under the Internal Revenue Code.

42. Upon information and belief, Brown & Wood and Ruble were aware of Ernst & Young's conclusions with respect to Jenkens & Gilchrist's opinion letter and/or made its own conclusions to the same effect, but failed to disclose this fact to the Seippels.

43. The Seippels were informed, by Mr. Paul, acting at the behest and with the knowledge and authority of all the Defendants, including Deutsche Bank, during their late 1999 meetings and telephone conversations, that depending on the exchange rate between the U.S. dollar and the foreign currencies involved in the options transactions, Mr. Seippel could realize a pre-tax gain or loss upon expiration of the options. However, the Seippels were assured that the tax benefits to them of the COBRA transaction as a whole, resulting from the creation of losses to offset gain on the Stock Options Transaction, far outweighed any losses that could be incurred as a result of the options transactions.

44. Ernst & Young's Mr. Paul, acting at the behest of and with the knowledge and authority of Brown & Wood and Ruble, advised the Seippels that any losses created by the COBRA transaction were legitimate and in accordance with all applicable tax laws, rules and regulations, that the COBRA transaction was not a "sham transaction" that would be ignored or disallowed for tax purposes and that the opinion letter from Brown & Wood would confirm this.

45. The Seippels were advised that the COBRA transaction would require over 30 days to complete, and had to be completed by the end of calendar year 1999 in order to have its desired effect, and that the Seippels would have to commence the transaction promptly.

46. The Seippels were discouraged from consulting their own attorney concerning COBRA by Mr. Paul's representations that doing so would violate the confidentiality of the

"proprietary" product, COBRA. In fact this representation was false since COBRA had been developed with the participation of DGI and the same or substantially the same tax strategy was widely being marketed by the Defendants and E&Y and others.

47. Based on, and in reasonable reliance upon, the legal advice of Brown & Wood and Ruble, and the representations concerning the economic or financial substance of the COBRA transactions, conveyed orally by Ernst & Young, and the promised formal Opinion Letter, the Seippels decided to engage in the COBRA transaction. The Defendants assisted the Seippels in determining the amount of loss, and advised them that they should create an ordinary loss to offset the ordinary gain they were recognizing as a result of the Stock Options Transaction. Thereafter, Deutsche Bank, acting pursuant to the Defendants' Arrangement, provided the Seippels with investment advice regarding which foreign currency options to buy and sell.

48. Prior to engaging in the currency option trades, and acting pursuant to advice given by Defendants, their agents and co-conspirators, Will Seippel formed a corporation, WSWP Virginia Investors, Inc. ("WSWP, Inc."). WSWP, Inc. issued stock, in exchange for payment, to Will Seippel and another individual who was not Sharon Seippel.

49. On December 1, 1999, based on and in reasonable reliance upon the direction and the legal advice provided by Brown & Wood and Ruble, and the representations concerning the economic or financial substance of the COBRA transactions conveyed orally by Ernst & Young, and the promised formal opinion letter of Brown & Wood and Ruble, Mr. Seippel, through WHS

LLC, a limited liability company ("LLC"), using the facilities of Deutsche Bank, entered into the COBRA currency transactions.

50. On December 1, 1999, based on and in reasonable reliance upon the direction of the legal advice of Brown & Wood and Ruble, and the representations concerning the economic or financial substance of the COBRA transactions conveyed orally by Ernst & Young, and the promised formal Opinion Letter, Mr. Seippel, through WHS LLC, a limited liability company ("LLC") he established with the assistance of Jenkens & Gilchrist, using the facilities of Deutsche Bank, entered into over-the-counter, non-publicly traded, European-style foreign currency option positions on the British Pound Sterling and on the Swiss Franc (the "currency options"), (a) purchasing options on the British Pound/U.S. dollar exchange rate at the strike price of $1.5774 per 1.0 Pound with an expiration (or determination) date of December 23, 1999, a settlement date of December 27, 1999, a payoff amount of $20,400,000, and a paid premium of $10,200,000, and purchasing options on the Swiss Franc/U.S. dollar exchange rate at the strike price of 1.5554 Francs per 1.0 U.S. dollar with an expiration (or determination) date of December 23, 1999, a settlement date of December 27, 1999, a payoff amount of $3,600,000, and a paid premium of $1,800,000 (together the "currency long option"); and (b) selling options on the British Pound/U.S. dollar exchange rate at the strike price of $1.5772 per 1.0 Pound and received a premium of $9,690,000, again with an expiration date of December 23, 1999, a settlement date of December 27, 1999, and a payoff amount of $19,125,000, and selling options on the Swiss Franc/U.S. dollar exchange rate at the strike price of 1.5552 Francs per 1.0 U.S. dollar and received a premium of $1,710,000, again with an expiration (or determination) date of December

23, 1999, a settlement date of December 27, 1999, and a payoff amount of $3,375,000 (together the "currency short option"). These currency long and short options were designed by the Defendants as a single integrated transaction reflected in a single document. The counter-party to the currency options transactions was Deutsche Bank.

51. As a result of the currency options, Mr. Seippel paid a net premium to Deutsche Bank of $600,000, consisting of the $12,000,000 ($10,200,000 plus $1,800,000) paid for the currency long option less the $11,400,000 ($9,690,000 plus $1,710,000) received for the currency short option.

52. On December 2, 1999, Mr. Seippel, through WHS LLC, in reasonable reliance on the legal advice of Brown & Wood and Ruble conveyed orally by Ernst & Young and the promised formal Opinion Letter, contributed his currency options to WSWP Partners, a Virginia general partnership he established pursuant to Defendants' COBRA scheme.

53. On or about December 12, 1999, WSWP Partners purchased Canadian dollars, in reasonable reliance on the legal advice of Brown & Wood and the representations concerning the economic or financial substance of the COBRA transactions conveyed orally by Ernst & Young, and the promised formal opinion letters of Jenkens & Gilchrist and Brown & Wood.

54. On or about December 23, 1999, WSWP Partners' currency option positions expired in accordance with their terms.

55. On December 27, 1999, Mr. Seippel contributed his interest in WSWP Partners to WSWP Inc., the Virginia subchapter S corporation he established pursuant to Defendants' COBRA scheme. WSWP Inc. was created at and in reasonable reliance on the legal advice of

Brown & Wood and Ruble, and the promised formal Opinion Letter of Brown & Wood. On or about December 27, 1999, WSWP Partners was liquidated, at and in reasonable reliance on the legal advice of Brown & Wood and Ruble conveyed orally by Ernst & Young, and the promised formal Opinion Letter of Brown & Wood. As a distribution in liquidation of WSWP Partners, all of the Canadian dollars were distributed to WSWP Inc., again at and in reasonable reliance on the legal advice of Brown & Wood and Ruble and the representations concerning the economic or financial substance of the COBRA transactions conveyed orally by Ernst & Young, and the promised formal Opinion Letter of Brown & Wood.

56. On December 29, 1999, WSWP Inc. sold all of its investment in the Canadian dollars, again, at and in reasonable reliance upon the legal advice Brown & Wood and Ruble and the representations concerning the economic or financial substance of the COBRA transactions conveyed orally by Ernst & Young, and the promised formal Opinion Letter of Brown & Wood.

57. On or about March 9, 2000, Brown & Wood and Ruble sent Mr. Seippel their Opinion Letter, stating, *inter alia*, that COBRA was not a tax shelter, did not need to be registered, and that the Seippels could properly and legally claim a loss totaling $12,000,000 as a result of the COBRA transaction. The Brown & Wood Opinion Letter was authored and prepared by and/or under the supervision of Ruble, and transmitted to the Seippels through the interstate mail.

58. In about early 2000, the Seippels paid, through the interstate mail or interstate wire transfers, Brown & Wood the amount of $21,180, its fee for providing legal advice and the Opinion Letter.

59. In reasonable reliance on the tax advice, legal advice and professional services rendered by the Defendants and their representations concerning the economic or financial substance of the COBRA transaction, the Seippels signed and filed the 1999 and 2000 federal and state income tax returns on behalf on themselves individually and the entities created to engage in the COBRA transactions. These returns included the cost of the currency long option, but not the premiums received for the currency short option, in their tax basis for computing losses, claimed losses in the total amount of the net premiums paid by them to Deutsche Bank for the long currency option, or $12,000,000, and deducted the fees paid to Ernst & Young, Deutsche Bank, Jenkens & Gilchrist and Brown & Wood or used them to increase the basis of their investments.

60. Brown & Wood and Ruble knew or should have known that the COBRA transaction would be regarded by the tax authorities as constituting a tax shelter within the meaning of Internal Revenue Code Section 6111(c)(1), and that they, along with Deutsche Bank, were therefore illegally promoting an unregistered tax shelter by marketing the COBRA transaction to their clients. Nonetheless, Brown & Wood and Ruble failed to inform Plaintiffs of this and, in fact, advised them to the contrary.

61. Brown & Wood, Ruble and Deutsche Bank never disclosed to the Seippels the adverse consequences that would flow from their role in promoting COBRA or the fact that these Defendants were promoting an unregistered tax shelter.

62. IRS Notice 1999-59, published on December 27, 1999, entitled "Tax Avoidance Using Distributions of Encumbered Property", stated that "[t]he Internal Revenue Service and

Treasury Department have become aware of certain types of transactions, as described below, that are being marketed to taxpayers for the purpose of generating tax losses. This notice is being issued to alert taxpayers and their representatives that the purported losses arising from such transactions are not properly allowable for federal income tax purposes. . . . Through a contrived series of steps, taxpayers claim tax losses for capital outlays that they have in fact recovered. Such artificial losses are not allowable for federal income tax purposes."

63. Before causing the Seippels to engage in and complete the COBRA transactions, the Defendants never disclosed to Plaintiffs the existence of IRS Notice 1999-59 or the decision rendered by the Third Circuit in the ACM Partnership case.

64. In part, as a result of IRS Notice 1999-59 and the decision in the ACM Partnership case, Brown & Wood and Ruble, knew or should have known at the time they provided legal advice to the Seippels, and caused them to engage in and complete the COBRA transactions, that the purported losses arising from the COBRA transaction, according to the IRS, were not properly allowable for federal (or state) income tax purposes, but failed to inform Plaintiffs of this and indeed informed them to the contrary.

65. In part, as a result of IRS Notice 1999-59, Deutsche Bank knew or should have known at the time it executed the options transactions for Plaintiffs that the losses arising from the COBRA transaction were not properly allowable for federal or state income tax purposes, and that therefore the options transactions were not suitable for Plaintiffs, but failed to inform Plaintiffs of this because Deutsche Bank had a conflict of interest.

66. On September 5, 2000, the IRS published Notice 2000-44, entitled "Tax Avoidance Using Artificially High Basis." That Notice concerned "similar transactions [to those described in Notice 1999-59] that purport to generate tax losses for taxpayers." Notice 2000-44 specified the precise transaction marketed by the Defendants to Plaintiffs as the COBRA transaction, under which the taxpayer purchases call options and simultaneously writes offsetting call options, transfers the option positions to a partnership, and ultimately claims that the basis in his partnership interest "is increased by the cost of the purchase call options but is not reduced under [Internal Revenue Code] § 752 as a result of the partnership's assumption of the taxpayer's obligation." The IRS again stated that "[t]he purported losses from these transactions (and from any similar arrangements designed to produce noneconomic tax losses by artificially overstating basis in partnership interests) are not allowable as deductions for federal income tax purposes."

67. Brown & Wood, Ruble, and Deutsche Bank knew or should have known, in part as a result of IRS Notice 2000-44, that the purported losses arising from the COBRA transaction were not properly allowable for federal or state income tax purposes, but failed to inform Plaintiffs of this, and failed to promptly advise the Seippels to amend their 1999 tax returns or to consider these developments when filing their 2000 tax returns in 2001.

68. The failure to the Defendants to inform the Seippels of Notice 2000-44 was designed to, and did, prevent them from suing Defendants earlier or taking steps to avoid the assessment of tax interest and penalties by the tax authorities.

69. Upon information and belief, Deutsche Bank personnel involved in designing and implementing the transactions needed to affect tax strategies being promoted by Defendants,

including COBRA, were concerned about the legality of those strategies. Deutsche Bank hired its own legal counsel to investigate the lawfulness of, and risks associated with, these tax strategies; Deutsche Bank consulted attorneys such as Sherman & Sterling and Davis Polk & Wardwell.

70. Upon information and belief, Deutsche Bank was advised by its counsel that the tax shelters, including COBRA, were highly risky and likely to be challenged by the IRS and/or found unlawful or abusive.

71. Deutsche Bank never disclosed to Plaintiffs that it knew or had been advised that COBRA was a highly risky tax strategy, or likely to be challenged by the IRS and/or found unlawful or abusive.

72. Until approximately July 2002, when they were forced to retain and begin to pay new advisors, the Seippels sustained no injury or damages due to Defendants' misconduct.

73. The Seippels did not pay any additional taxes, interest or penalties until October 3, 2002.

74. If the Seippels had paid their taxes for 1999 and 2000 without following the advice of the Defendants and without participating in COBRA, the Seippels: (a) would not have made investments in certain companies, investments that presently have no or little value, (b) would not have paid and incurred interest charges on sum they no longer have the use of and did not have the use of during a substantial part of the period since 2000 and (c) would not have been forced to sell assets at fire sale prices in order to pay their tax obligations.

75. After retaining new advisors after July 2002 and obtaining additional tax and legal advice, the Seippels discovered for the first time that the Defendants, among other things, had: (1) abused their fiduciary relationship with the Seippels and committed professional malpractice by providing advice that they knew or should have known was wrong and/or directly contradicted by published authority; (2) likely caused the Seippels to incur substantial additional tax liability including interest and penalties due to the filing of returns that underreported income based on the COBRA transaction or the deduction of the Defendants' fees; and (3) failed to promptly advise the Seippels to amend their tax returns.

76. As noted earlier, the receipt of fees was the sole motive in the development and execution of the Defendants' Arrangement. Further, the amount of fees earned by the Defendants was not tied to or reflective of the amount of time or effort they expended in providing legal, tax, investment or financial services, but rather was tied to the amount of the capital losses each client would claim on its tax returns and the amount of the tax the clients would avoid. Indeed, the Defendants devised the scheme and agreed to provide a veneer of legitimacy to each others' opinions as to the lawfulness and tax consequences of the plan by agreeing, before potential clients were solicited, that Ernst & Young and Deutsche Bank could orally present the legal advice of the lawyers and that subsequently the lawyers (Brown & Wood, and Ruble) would issue allegedly "independent" opinions. The Defendants then promoted the transactions to Plaintiffs, as well as other clients, and solicited their use of the COBRA transactions, rather than simply respond to requests for tax and/or investment guidance and advice from existing clients.

77. The receipt of fees and the pecuniary gain from those fees was the sole motive for Defendants' conduct; the provision of professional services to clients was merely an incidental by-product of, not a motivating factor for, Defendants' conduct alleged herein. Further, the Defendants' Arrangement gave each of the participating Defendants a significant pecuniary interest in the advice and professional services they would render, allowed each of the Defendants to direct and regulate the professional judgment of each of the other Defendants, and impaired the exercise of that judgment and the duty of care, loyalty and honesty each of the Defendants owed to the Plaintiffs and their other clients.

78. Further, the ability of Ernst & Young and Deutsche Bank to solicit clients for Brown & Wood and Ruble, something the law firms and individual lawyers could not do themselves, as more particularly alleged below, impaired the judgment of the lawyers and their exercise of the duty of care, honesty and loyalty they owed their clients, including Plaintiffs.

79. Brown & Wood and Ruble had a financial, business and property interest in inducing Plaintiffs, as well as other clients, to enter into the COBRA transactions, and to do so, promised, opined and assured that the transactions would enable Plaintiffs and others to avoid taxes. Brown & Wood and Ruble never disclosed to Plaintiffs that their representation of them would be materially limited and impaired by their own interests in the transactions in violation of Disciplinary Rule 5-101 of the New York Code of Professional Responsibility, and Rule 1.7(b) of the Virginia Rules of Professional Conduct. Brown & Wood's and Ruble's undertaking of the representation of Plaintiffs violated their duty of care, honesty and loyalty owed by attorneys to

their clients and impaired the exercise of their professional judgment in violation of the New York and Virginia Rules of Professional Conduct.

80. None of the Defendants disclosed to the Seippels that the provision of professional services was not the primary motivation for advising them to engage in a COBRA transaction. Nor did any of the Defendants disclose to the Seippels that their involvement as marketers and promoters of a tax shelter compromised their objectivity and presented a risk that the Internal Revenue Service and state tax authorities would and could claim that the Opinion Letter provided by Brown & Wood and Ruble would not shield them from the assessment of penalties. In fact, the Defendants, through their agent Ernst & Young, and in their Opinion Letter represented the exact opposite.

81. Brown & Wood and Ruble did not disclose that they were providing opinion letters on tax shelters they had created.

82. Deutsche Bank had a financial, business, and proprietary interest in inducing Plaintiffs, as well as other clients, to enter into the COBRA transactions, and to do so, facilitated the COBRA transaction while remaining silent and failing to inform Plaintiffs, as well as other clients, that the COBRA transaction would not provide legitimate tax losses for Plaintiffs, or other clients. Further, on information and belief, Deutsche Bank knew that Plaintiffs and others induced to enter into COBRA transactions were being told that there was a reasonable prospect that the COBRA transactions would earn a profit and that this prospect was a key factor in the legitimacy of the transactions under the tax laws. Deutsche Bank, as well as the other Defendants, knew, however, that the options transactions were structured in a way that vested in

Deutsche Bank the ability to control whether a profit was earned. Neither Deutsch Bank nor the other Defendants disclosed this unique structure to the Seippels or other clients and in fact concealed it because that might have led clients not to participate in the transactions, and sacrifice the substantial fees Defendants would earn on the transactions.

83. On information and belief, pursuant to the above-referenced Defendants' Arrangement, Ernst & Young and Deutsche Bank solicited clients for Brown &Wood and Ruble, who thereby promoted what the IRS has found to be an illegal tax shelter. Such solicitations violated the applicable rules of conduct for the attorneys in that:

a. Brown & Wood and Ruble, through Ernst & Young, solicited professional employment from Plaintiffs, and others, and promoted tax shelters, in violation of Disciplinary Rule 2-103 of the New York Code of Professional Responsibility; and

b. Brown & Wood and Ruble violated Rule 7.3(a) of the Virginia Rules of Professional Conduct by assisting Ernst & Young in soliciting employment for them.

84. As described above, Brown & Wood and Ruble split the fee to be charged to persons entering into COBRA transactions with the firms that solicited their participation. Such conduct violated the applicable rules of conduct for the attorneys in that:

a. By the fee splitting arrangement, Brown & Wood and Ruble shared legal fees with non-lawyers in violation of Rule 54.(a) of the Virginia Rules of

Professional Conduct and Disciplinary Rule 3-102 of the New York Code of Professional Responsibility; and

b. By agreeing in advance to provide legal advice and opinions to clients the other Defendants would solicit, and by allowing the other Defendants to use Brown & Wood and Ruble's names in soliciting clients and to promise Brown &Wood and Ruble would endorse the plan described by the other Defendants, Brown & Wood and Ruble allowed the other Defendants and Ernst & Young to receive millions of dollars in fees, thereby compensating and giving the other Defendants and Ernst & Young something of value for recommending Brown & Wood and Ruble's services in violation of Disciplinary Rule 2-103(B) of the New York Code of Professional Responsibility which states that a "lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client," as well as Rule 7.3(d) of the Virginia Rules of Professional Conduct, which is to similar effect.

85. The Defendants' Arrangement described above constituted a partnership and association of lawyers and nonlawyers that included the practice of law for a profit and aided nonlawyers in the unauthorized practice of law. The arrangement violated Disciplinary Rule 3-101 of the New York Code of Professional Responsibility and Rules 5.4 and 5.5 of the Virginia Rules of Professional Conduct.

86. As noted earlier, the options transactions were structured in a way that vested the ability to control whether a profit, and how much profit, was earned on the COBRA transactions. In exercising this control or discretion, Deutsche Bank had a conflict of interest.

FIRST CLAIM
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5 – Against All Defendants)

87. Plaintiffs repeat and reallege each and every prior allegation in Paragraphs 1 through 86, inclusive, as if fully set forth herein.

88. During relevant times, each of the Defendants participated in and carried out a plan, scheme and course of conduct which was intended to and did deceive Plaintiffs, as alleged herein, and caused Plaintiff William H. Seippel to issue himself stock in a corporation in connection with the COBRA transaction, to utilize the COBRA strategy, and to engage in the COBRA transactions and file tax returns in connection with those transactions and the purchase or sale of securities, including the purchase of shares in WSWP, Inc. and the exercise of the Stock Option Transactions, causing the Plaintiffs to suffer damages. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

89. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the Plaintiffs in an effort to enrich themselves by promoting a fraudulent tax scheme to offset capital gains from the sale of Plaintiffs' securities in violation of